

Legal Overview for New State Board of Health Members

Heather Adams, Assistant Attorney General
Iowa Attorney General's Office
Iowa Department of Justice
Hoover Building, 2nd Floor
Des Moines, IA 50319
(515) 281 - 3441
Heather.Adams@ag.iowa.gov

This overview incorporates portions of an outline prepared by Pamela Griebel and Emily Willits, Directors of the Licensing and Administrative Law Division. This outline provides a general overview of laws related to the State Board of Health and is not intended to cover all applicable laws or the nuances of applicable laws.

Last Updated November 2019

Mission and Authority

1. The State Board of Health (SBOH) is created by a statute enacted by the Iowa General Assembly – Iowa Code chapter 136 – to act as the policy and rulemaking body for the Department of Public Health (Department).
2. The SBOH possesses only that authority granted by law. The main duties of the SBOH are contained in Iowa Code chapter 136, although several other provisions of law grant the SBOH with additional duties and responsibilities.
 - a. Iowa Code chapter 136 provides that the SBOH shall provide a forum for the development of public health policy in the state of Iowa and shall have the following powers and duties:
 1. Consider and study legislation and administration concerning public health.
 2. Advise the department on any issue related to the promotion and protection of the health of Iowans including but not limited to:
 - a. Prevention of epidemics and the spread of disease, including communicable and infectious diseases such as zoonotic diseases, quarantine and isolation, sexually transmitted diseases, and antitoxins and vaccines.
 - b. Protection against environmental hazards.
 - c. Prevention of injuries.
 - d. Promotion of healthy behaviors.
 - e. Preparing for, responding to, and recovering from public health emergencies and disasters.
 3. Establish policies governing the performance of the department in the discharge of any duties imposed on it by law.
 4. Provide guidance to the director in the discharge of the director's duties.
 5. Assure that the department complies with Iowa Code and administrative rules. For this purpose the board shall have access at any time to all documents and records of the department.
 6. Assure that the department prepares and distributes an annual report.
 7. Advise or make recommendations to the director of public health, governor, and general assembly relative to public health and advocate for the importance of public health standards for state and local public health.
 8. Offer consultation to the governor in the appointment of the director of the department.

9. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health and prevention of substance abuse, and for the guidance of the department. All rules adopted by the department are subject to approval by the board.

10. Act by committee, or by a majority of the board.

11. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department.

12. Perform those duties authorized pursuant to [chapter 125](#). The board may appoint a substance abuse and gambling treatment program committee to approve or deny applications for licensure received from substance abuse programs pursuant to [chapter 125](#) and gambling treatment programs pursuant to [chapter 135](#) and to perform any other function authorized by [chapter 125](#) or [135](#) and delegated to the committee.

b. Other laws establish additional duties of the SBOH, including: (1) approving rules for entities licensed by the Department of Inspections and Appeals such as health care facilities, hospitals, and hospices (135B.7, 135C.14, 135J.7); (2) establishing immunization requirements (139A.8); (3) performing duties related to substance abuse prevention and treatment (125.7), and (4) approving the congenital and inherited disorders screening panel (136A.5).

3. All state boards and commission, including the SBOH, may not expand their authority beyond that granted by law.

4. New members should read - and reread - the laws governing the board.

a. Staff, other board members, prior minutes of meetings, and websites are good sources of information, but board terms are staggered for a reason: new board members bring a new perspective and vitality.

b. Don't rely exclusively on what others tell you about the mission of the board or its authority.

5. A board's mission is always serving a public purpose. When serving on the SBOH, you are representing the citizens of Iowa; always make decisions with the board's public purpose in mind.

Rulemaking

1. The SBOH has rulemaking authority.
2. Rules are in a very real way the department and the board's laws – administrative rules have the force and effect of law.
3. Rules must be authorized by and consistent with statutes.
4. Rulemaking is a powerful authority. Rules:
 - a. Describe the organization and procedures of the department.
 - b. State how the department will implement laws.
 - c. Inform people about guidelines and policy choices that impact their legal rights and duties.
5. The Governor, Legislature, Attorney General, and the public all have a role to play when boards adopt rules -- there are many checks and balances. All boards and other agencies are required to review rules on a five-year rolling cycle.
6. In addition to consistency with statutes, rules should be:
 - a. Easy to read and understand.
 - b. Tied to specific needs and objectives.
 - c. Sensitive to costs - benefits should outweigh costs.
 - d. Effective.
 - e. Developed with input by those affected.
 - f. Fair - use rulemaking power wisely.

Decision making

1. No single board member makes decisions for the SBOH.
2. Boards make decisions by taking votes at board meetings.
3. A “quorum” of the board is needed to take a vote. A majority of the board members (6 of 11) constitutes a quorum for the SBOH.
4. Once a quorum is attained, most board action is taken upon a majority vote of those participating – but there are important exceptions.
 - a. Boards may only go into closed session upon a public vote by two-thirds of the members or all members present.
 - b. Discipline can only be imposed on a licensee by a majority vote of members or a higher percentage if required by law.

Tip: Before you vote, determine if there is a quorum and how many “aye” votes are required to take the particular action.
5. The votes of all members must be public and clear during the meeting and in the minutes. No secret voting allowed!

Board Meetings – Open Meetings Law

1. The SBOH is governed by the Open Meetings Law at Iowa Code chapter 21. The law requires: (1) providing public notice of the SBOH's meetings, (2) posting an agenda of the meeting, (3) the keeping of minutes, and (4) allowing the public to be present.
2. Count Heads! If a majority of the board is present (in person or electronically), do not discuss board business unless you are at a board meeting preceded by proper notice to the public and a posted agenda.
3. Purely social or ministerial gatherings are not meetings as long as no board business is discussed, but be careful to avoid even the appearance of holding an illegal meeting.
4. Agendas are a board's invitation to the public to watch the board in action.
 - a. Post agendas at least 24 hours in advance.
 - b. Identify all topics on which votes will be taken and matters that will be discussed.

Tip: Read the agendas posted for your board over the past year. Can you tell what the board planned to vote on or discuss? If not, advocate more detail in your board's agendas.
5. Stick to the posted agenda. If a new idea comes up at a meeting and there is no emergency requiring immediate action, place the topic on the agenda for the next meeting.
6. Lights! Cameras! Action! The public has a right to observe the open sessions of your board meetings and may record them or take photographs.
7. The public does not have the right to participate in your meetings, but boards may provide an opportunity for public comment at meetings.

Board Meetings - Minutes

1. Minutes of board meetings create a permanent record of who met, when they met, what they discussed, what they decided, and by what votes.
2. Accurate minutes are a key tool for conducting the public's business in an open and accountable way.
 - a. Minutes are a vital organizational tool for boards.
 - b. Minutes are a crucial way for citizens to review public action taken on their behalf.
3. Minutes of open sessions must always include:
 - a. The date, time, and place of a meeting.
 - b. Which members were present.
 - c. Actions taken, with sufficient information to reflect members' votes.

Tip: Read your board's minutes for the past year. Can you tell what the board voted on or discussed? If not, advocate more detail in your board's minutes.
4. If a closed session is held, the minutes of the open session must include the legal grounds for a closed session, the vote of each member on whether to go into closed session, and any final action taken – no final votes may be taken in closed session.
5. When applicable, minutes must also explain the legal basis for holding a telephonic meeting, an emergency meeting (less than 24 hours notice), or a meeting at a time or place not reasonably accessible to the public.

Board Meetings - Closed Sessions

1. Closed sessions are serious business! Never ask the public to leave the meeting so the board can talk in private – unless the board has a legal basis to hold a closed session.
2. In order to go into closed session, a board must first meet in open session with proper advance notice and posted agenda.
3. A board can only close an open session if expressly authorized by statute. For example, a board is authorized to go into closed session to discuss confidential records, pending litigation with counsel, certain personnel matters, or the decision to be issued in a contested case.

Tip: You should always ask your board's assigned AAG for legal advice if you are not confident you have grounds to vote to go into closed session. Get the advice in writing or make sure the advice is reported in the minutes of the meeting.
4. After announcing the legal basis for a closed session, take a roll call vote. Remember, a board can only close a session upon an affirmative vote of two-thirds of the members or all members present.
5. While in closed session, boards must:
 - a. Record the session (and keep the recording at least a year).
 - b. Take detailed minutes.
 - c. Limit the discussion to the announced basis for the closed session.
6. Final action must be taken in open session. When the closed session discussion is finished, return to open session and allow those who left the room for the closed session to return. Then make a motion and take a vote on any final action in open session.

Board Records - Public Records Law

1. The SBOH is subject to the Public Records Law at Iowa Code chapter 22. Board records are open to public examination unless specifically made confidential under law.
2. Public records can be in any form, including e-mail. Board members should not commingle official board business emails with personal emails. Your board's staff or AAG can advise on methods of separating emails.
3. Assume any record you create or receive as a board member is a public record that may be open to the public upon request.

Tip: Practice that old adage – only say what you would be comfortable reading on the front page of your local newspaper!
4. The public records contact for your board is the Department's communications director.
 - a. Requests for public records should be referred to your board's public records contact.
 - b. The public records contact is familiar with the law and can assure proper response to requests for public records.
5. Be aware of any board records you create or receive which may be confidential – but note it is rare for SBOH members to receive confidential information.
 - a. There may be severe penalties for releasing some types of confidential records -- another good reason to refer all requests for records to the board's public records contact!
 - b. Examples of records that may be fully or partially confidential include applications containing social security numbers or credit card numbers, mental health or other health records, complaints against licensees, and criminal history background reports.

Sunshine Law Enforcement

1. Actions to enforce Iowa's Open Meetings and Public Records Laws can be brought by a citizen of Iowa, a person who pays taxes of any type to the state of Iowa, a person individually aggrieved by a violation, a county attorney, and the Attorney General. Such actions may be brought in court or before the Iowa Public Information Board.
2. Complaints about alleged violations may be made directly to the board, its staff or counsel, or to the Ombudsman's Office, Attorney General, the Governor's Office, the Iowa Public Information Board or legislators.
3. Take all alleged violations seriously.
4. Remedies include removal from office upon a second violation, damages (up to \$2,500 for a knowing violation), expenses and attorney fees, and injunctive relief.

Tip: Iowa public officials, by and large, will comply with Iowa's Sunshine laws when they know what they are. Educate yourself and ask staff or the AAG assigned to the board if you are unsure.

5. Even an honest mistake can be a violation of Iowa's Sunshine laws, but individual board members can avoid personal liability when they rely upon the advice of counsel, formally given in writing or provided orally and memorialized in the minutes.
6. Attorney General Tom Miller has issued dozens of "Sunshine Advisories" to educate public officials and the public about Iowa's Open Meetings and Public Records Laws. The advisories (with index) are found at: <https://www.iowaattorneygeneral.gov/about-us/sunshine-advisories/>. You may also wish to consult the web page of the Iowa Public Information Board at: <https://www.ipib.iowa.gov>.

Board Members as Judges

1. The SBOH operates as the appeal body for substance use disorder and problem gambling program licensure appeals. The board makes a final decision after an administrative law judge (ALJ) conducts a hearing and issues a proposed decision.
 2. Board members who conduct hearings or review proposed decisions of an ALJ are governed by the Administrative Procedure Act (APA) and a Code of Administrative Judicial Conduct.
 3. The Code of Administrative Judicial Conduct may be found at:
<https://www.legis.iowa.gov/docs/iac/chapter/01-30-2019.481.15.pdf>
 4. “A presiding officer shall uphold and promote the independence, integrity, and impartiality of the administrative judiciary.” Canon I.
 - a. All parties are entitled to unbiased, fair treatment – free from improper influences of family, social, political, or other relationships, or prejudgment of the facts.
 - b. All decisions must be made solely on the record in the case. Board members shall not communicate with a party to the case without notice to and an opportunity for all parties to participate.
 - c. Board members may not personally investigate facts and then sit in judgment on those facts.
- Tip: Board members acting in the role of judge generally receive specific training on this important role. During hearings, boards are aided by an ALJ and board staff.

Additional Laws Governing Board Members

1. Gift Law. Board members may not accept gifts (i.e., receiving something for free or for less than it is worth) from those they regulate or contract with. Ask your AAG, board staff, or the Ethics and Campaign Disclosure Board <http://www.iowa.gov/ethics> for guidance on gift law compliance.
2. Sales or leases of goods or services. If you sell or lease goods or services to those regulated by your board, ask the board's AAG, board staff, or the Ethics and Campaign Disclosure Board for guidance on applicable laws.
3. Lobbyist. The Department has a designated, registered lobbyist who represents the board. Individual board members should not lobby legislators on behalf of the board or the Department. The SBOH is authorized as a body to advise and make recommendations to the general assembly relative to public health matters. Seek advice from the board's AAG if you have specific lobbying questions.
4. Conflicts of interest. Conflicts of interest should be avoided, but how and when they arise can be unique to certain boards, especially because the law often requires the appointment of at least some persons who are regulated by the board. Anytime your objectivity may be impaired or there is an appearance of impropriety, seek advice from your board's AAG.
5. Judicial review. All board action (or inaction) is subject to review in court on a variety of grounds including whether the action is:
 - a. Compliant with the U.S. or Iowa Constitution, statutes or rules.
 - b. Consistent, nonarbitrary, logical, and reasonable.
 - c. Supported by the facts and law.
6. Litigation. If the SBOH or its individual members are sued related to board action, board members acting in good faith in their official board capacity are generally defended by the Attorney General and indemnified by the State.